UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TARA INTERNATIONAL, L.P.

and Cases 13–CA–38512
13–CA–38955

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 777, AFL-CIO

and Case 13–CA–38646

JOSEFINA GASCA, AN INDIVIDUAL

Richard Kelliher-Paz and Vivian Perez Robles, Esqs.,
for the General Counsel.
David C. Hagaman, Esq., (Ford & Harrison, LLP),
of Atlanta, Georgia, for the Respondent.
James Glimco, of Chicago, Illinois,
for the Charging Party Teamsters Local 777.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: On April 27, 2000 and July 27, 2000, the International Brotherhood of Teamsters, Local 777, AFL-CIO, Union herein, filed a charge and amended charge respectively against Tara International, L.P., Respondent herein, in Case 13–CA–38512. On November 8, 2000, the Union filed a charge against Respondent in Case 13–CA–38955. On June 19, 2000, Josefina Gasca, an individual, filed a charge against Respondent in Case 13–CA–38646.

On December 7, 2000, the National Labor Relations Board, by the Acting Regional Director for Region 13, issued a consolidated complaint which alleges that Respondent violated Sections 8(a)(1) and (3) of the National Labor Relations Act, herein the Act, when, during the course of a union organizing campaign, Respondent, through its supervisors and agents, among other things, unlawfully threatened employees, unlawfully promised employees certain benefits, unlawfully interrogated employees, unlawfully told employees it would be futile to select the union, unlawfully created the impression among employees that their union activities were under surveillance, unlawfully solicited grievances, unlawfully told employees they had to convince coworkers not to support the union, and when, after the union organizing campaign ended in an election defeat for the Union Respondent, through its supervisors and agents, unlawfully discharged employee Josefina Gasca and refused to rehire employee Christopher Marquez and told the employees that wage raises were dependent on the Union dropping charges against Respondent.

Respondent filed an answer in which it denied it violated the Act in any way.

A hearing was held before me in Chicago, Illinois, on 7 days between February 12, 2001 and March 21, 2001.

Based on the entire record in this case, to include post hearing briefs submitted by Counsel for the General Counsel and Respondent, and considering the demeanor of the witnesses I hereby make the following

I. Findings of Fact

At all material times Respondent, a partnership, with an office and place of business in Hodgkins, Illinois, has been engaged in the business of packaging products.

Respondent admits, and I find, that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. *Overview*

In early 2000, employees Christopher Marquez and Manuel Marquez met with representatives of the Union in an effort to secure union representation for themselves and their fellow employees. The Marquez' are not related to each other.

Following their meeting with representatives of the Union the two men returned to work and handed out union authorization cards to their fellow employees.

Respondent runs a facility where product, e.g., candies and pastries, are repackaged. Many of the employees are from Mexico and speak little or no English. Some speak both English and Spanish such as Manuel Marquez and some speak only English like Christopher Marquez. Authorization cards in English and Spanish were handed out.

On February 25, 2000 the Union filed an election petition and an election was scheduled for April 13, 2000, wherein the employees in the unit stipulated to by Respondent and the Union with the approval of the Region would chose whether to be represented by the Union or not.

There were 122 eligible voters and there were 56 votes cast for representation by the Union and 61 votes against representation by the Union. Objections to the election were filed by the Union in Case 13–RC–20280, which was consolidated for hearing with the instant case. When the hearing opened on February 12, 2001, the Union withdrew its objections to the election so it could more quickly proceed to a second election.

The bargaining unit was stipulated to be as follows:

> All full-time production and maintenance employees, including mechanics and shipping and receiving employees employed by the Employer at its facility currently located at 9100 West 67th Street, Hodgkins, Illinois, but excluding all other employees, all employees laid-off on January 7, 2000, all quality assurance employees, all technical and part-time technical employees, all temporary employees, leads, office clerical employees, managers and guards, professional employees and supervisors as defined in the Act.

On April 25, 2000, twelve days after the election, the Respondent announced a lay off of 36 employees. Thirty four (34) production workers and two (2) employees from shipping and receiving were laid off, to include shipping and receiving employee Christopher Marquez. All of Respondent's employees were not laid off. Some months later there were some recalls and over the months some new hires. Respondent, at the time of the hearing before me, had approximately 80 employees rather than 122 employees at the time of the election.

The complaint alleges that numerous Section 8(a)(1) statements were made by various supervisors and agents of Respondent during the campaign leading up to the election as well as a Section 8(a)(1) statement made some months after the election.

In addition, the complaint alleges that Respondent violated the Act when it refused and failed to rehire Christopher Marquez when he sought in August 2000 to be rehired when Respondent was hiring employees.

Lastly, the complaint alleges that Josefina Gasca, a lead person, who along with three other lead persons, was excluded from the bargaining unit, was unlawfully fired because she did not work effectively enough to defeat the Union. Respondent claims that Gasca is a statutory supervisor whereas the General Counsel and Union maintain that she is a statutory employee.

B. *Section 8(a)(1) Conduct*

Section 8(a)(1) conduct, e.g., threats, interrogation, etc. are alleged to have been made by President Patrick Boyle, General Manager Mark Meyer, supervisors Regelio Cansino, Lillian Huckleberry and Vern Joens, and Alex Casillas, a consultant who was hired by Respondent during the campaign to assist in translating Respondent's antiunion message from English to Spanish in various meetings with employees. Many of Respondent's employees are immigrants from Mexico and do not speak English.

All of the above are admitted by Respondent to be supervisors and agents of Respondent within the meaning of Section 2(11) and 2(13) of the Act.

1. Patrick Boyle

Boyle is President of Tara Management and Tara Management is a general partner of Respondent.

Boyle was actively involved in the union campaign. He read a prepared text to all employees on either March 20 or 21, 2000. He stuck to the script and does not remember any questions and answer period after he spoke. The text of the speech is in English and is in evidence as Respondent Exhibit 10 and does not contain any unlawful statements. However, it was translated by Alex Casillas from English to Spanish. Casillas did not testify before me.

Boyle also spoke at a number of small group meetings. An outline in English of what was to be said at these small group meetings is in evidence as Respondent Exhibit 11. The outline was not followed word for word and again Casillas translated what was said from English to Spanish. Boyle does not speak Spanish.

Boyle also spoke a day or so before the April 13, 2000 election to all the employees in a large meeting. He read the prepared remarks in evidence in English as Respondent Exhibit 12. There was no question and answer session after the speech. Again, Casillas, who did not testify, translated what was read from English to Spanish. There is nothing unlawful in the English text of Boyle's speech. There is no Spanish text for Respondent Exhibits 10, 11, and 12. The two texts were used at group meetings for the two shifts, i.e., the text was read twice and the outline was used more often approximately ten times, in talking to small groups.

Magdalena Perez who no longer works for Respondent and who couldn't be at the originally scheduled tried in this case testified in a videotaped deposition taken on January 24, 2001, in evidence as General Counsel Exhibit 3a. A transcript of her testimony is in evidence as General Counsel Exhibit 3b.

Perez testified that Boyle said that he would prefer to close the plant rather than operate with a Union and in previous years had closed a company in less than two hours when a union came in. Perez testified through an interpreter.

Anna Maria Angeles, who no longer works for Respondent and testified through an interpreter testified that Boyle told the employees at a large meeting that he would close the factory in a matter of seconds and had done it before when a Union came on the scene.

Isidera Aspero, who had been laid off but later recalled and worked for Respondent at the time she appeared before me at the hearing, testified that Boyle said he had closed 3 companies in 20 minutes because of the union. Aspero testified through an interpreter.

Manuel Marquez, who along with Christopher Marquez, approached the union about representation and who later quit Respondent's employ testified in English that Boyle said that if the union gets in employees, many of whom were from Mexico, may lose the right to go to Mexico on leaves of absence.

Anna Maria Flores, who is no longer with Respondent and who testified through an interpreter, testified that Boyle said he'd rather close the plant than see a union come in and there may be no more permission to go to Mexico.

Maria Delgado, who is no longer with Respondent and who testified through an interpreter testified that Boyle claimed to have closed four companies in 20 minutes and could close Respondent in two to five minutes and motioned with his hand as if he had a key locking the plant door.

I do not find that Boyle unlawfully promised employees that after the election he would make their health insurance concerns a top priority. He merely stated that during the campaign he could make no promise of benefits, but was aware of their health insurance concerns.

I credit the testimony of Perez, Angeles, Aspero, Manuel Marquez, Flores and Delgado who impressed me as very credible that they heard what they claim they heard. It is possible with the exception of Manuel Marquez, who speaks English, that they heard what they heard because of faulty or incorrect translation by Alex Casillas, who didn't testify.

Accordingly, I find that Respondent violated Section 8(a)(1) of the Act when it threatened to close the plant and to terminate leaves of absence to go to Mexico if the Union became the collective bargaining representative of a unit of Respondent's employees. See, *NLRB v. Gissel Packing Co.,* 295 US 575 (1969).[1] Considering the total context, Respondent's threats would

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[1] In the prepared English text for the first group meeting, it states with respect to closing the plant and trips to Mexico as follows:

> "My concern is that if the union got into Tara and demanded a union contract with restrictive rules and work practices and other costs, we could not compete. If we could not meet our competition, we would lose business to our competitors who do not have a union. If we lose business, and could not keep enough work in here, then we would have more layoffs. If we continued to lose business because we could not compete, then we might even have to close this plant. Now I am not saying we would ever close this plant because of a union. We would not do that. But if we could not compete here at Tara, we have the legal right to close this plant down. So you see, we are not against the union because we are afraid the union will help you, we are against the union because we are afraid it will hurt our ability to compete. No matter how much the union tries to tell you otherwise, your success here is tied directly to the Company's ability to compete. Our ability to give you wage increases ever year and to keep jobs in this plant will continue only if we can get repack business that allows us to make money here at Tara."
>
> "I'd like to close my comments by talking about the point Mark made about the family atmosphere you have here at Tara. Tara is a great plant, and I am extremely proud of this plant and all of you who work here. You are like a family. Like any family, you have problems from time to time, but you work those problems out without bringing in some outside third party, like a union. You have the flexibility to work out your problems – to do the right thing in any given situation – because you are like a family. You don't have all the rules and politics they have in union plants. If one of you has to go home to Mexico for a month or two to take care of something back home, we let you do that because you are part of our family. If you need help on a special problem – for example you need a few days off – we work with you because we don't have a union contract that tells us we cannot do these things. So you see, when you really think about it, you have many job freedoms and benefits here because you do not have a union. I am concerned if we have a union here and had to live by all the rules in a union contract, we could not be as flexible on helping you out with your problems. It all depends on what goes into that union contract."

The outline used at the 10 or so small group meetings reads as follows on the issue of closing the plant or trips to Mexico:

> "I also want to discuss with you one of the big changes that could take place here if the Union won. Again, I am not predicting this would happen; only that it could happen.
>
> I think our employees have a really great situation here. You have a company that cares for you, supervisors and managers who try to work with you on your problems, and we have a good friendly atmosphere in which to work.

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We make mistakes, and I know that. We are not perfect; no plant like ours is. Union plants are not perfect either. But, working isn't all money. There are lots of other tangible things that make Tara a great place for you to work, like our policy to take a leave to go to Mexico; our flexible attendance policy. All of you could have gone out and gotten jobs at some union plant if you wanted – maybe making more money, but you didn't – you stayed here. I know why, and so do you. It is because we have a really good situation here. We treat you fairly, work with you on your problems, bend the rules when we can for you, all because we care about you and want you to be happy in your jobs.

So could all that change if the union was voted in? You bet!!

Everything is subject to negotiations. All the practices, unwritten rules we have here go on the table. And you know very well, that companies run things differently with a union than they do without one. Just ask any of our employees who have worked in a union plant, and they will tell you it wasn't all that great. Some of the employees here who are most against the union have worked in union plants (name some of those employees), and that should tell you something.

Having a union forces a company to 'live by the book.' We can't bend rules, make exceptions in special situations, because the union will file a grievance over it. Things get all tightened up in such situations, and the result is that we lose the friendly atmosphere we once had. That isn't what you want.

A person asked me the other day what happens in union plants if a company has employees with good papers to work in the U.S., but actually the papers are false. In a union plant those employees are usually turned into the Immigration Service because the union, not the company, wants jobs for U.S. workers, and demands that the company fire any illegals. Again, we are not predicting that would happen here, but with a union it could."

The prepared text for the group meeting a day or so before the election stated as follows on the pertinent issues:

"I told you that we at Schulze and Burch [a unionized employer controlled by Tara Management] had several branch operations and the workers in those plants were represented by various Teamster unions. In the mid 1980's, chain stores indicated that they did not want to accept Friday deliveries. We had a problem. We proposed a four day 10-hour schedule. They, the Union, could not have such an arrangement they said with Schulze and Burch because it would impact union contracts they had with other companies. We negotiated – but no satisfactory business solutions were being advanced. I made a decision to close all the branches (pause) – it was a tough business decision to make but it had to be made. I did not close those operations because of the Teamsters – it was a business decision and it impacted the lives of over hundred wonderful people. In that instance the Union representing the workers put their larger Union issues ahead of the members and the company. People who had worked for us 10, 15 and 20 years – their jobs were gone.

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tend to unlawfully interfere with employee free choice.

2. *Regelio Cansino*

Magdalena Perez, who, as noted above, testified in a videotaped deposition and who no longer works for Respondent testified that supervisor Cansino, who speaks both English and Spanish, about one week before the election, asked Perez what she thought about the union and went on to tell her that work would be more strick if the union got in. Interrogating or questioning employees about their union sympathies is unlawful. See *Rossmore House,* 269 NLRB 1176 (1984).

Anna Maria Angeles testified that Cansino told her that if the union got in things would be worse at the plant. This constitutes a threat of more onerous working conditions if the employees select a union to represent them. See, *G.E.'s Trucking, Inc.,* 252 NLRB 947, 950 (1980). However, a threat of imposing more onerous working conditions is not alleged in the complaint. I will not find a violation.

Isidera Aspero, who was still working for Respondent when she testified before me and who testified through an interpreter, testified that Cansino, one or two weeks before the election, asked her if she wanted the union. She replied that if the union got in it may help on the issue of heavy lifting and Cansino replied that the union won't help at all. It is unlawful of management to tell employees that it will be futile to select a union to represent them. See, *The Trane Co.,* 137 NLRB 1506 (1962).

Anna Maria Flores, who is no longer with Respondent and who testified through an interpreter, testified that Cansino asked her if she had thought about the union and she should vote but the union wouldn't help very much and with or without the union things will remain the same.

Christopher Marquez, who speaks English only and who was a outspoken union supporter, testified he was asked by Cansino why he wants the plant to close down.

Cansino denies what the above witnesses claim he said. According to Cansino he merely asked employees if they had seen antiunion postings put up by Respondent during the period before the election and if they had any questions. Cansino still works for Respondent. There was no evidence that Cansino was a personal friend of any of the General Counsel's witnesses or that Cansino and the witnesses discussed all manner of topics.

I credit Perez, Angeles, Aspero, Flores, and Christopher Marquez over Cansino and conclude that Respondent violated Section 8(a)(1) of the Act when it interrogated employees, threatened employees, and conveyed to employees that it would be futile for them to select the union. I do not credit all of Christopher Marquez's testimony as evidenced by the section below involving Respondent's failure to recall or rehire Marquez and allegations regarding supervisor Vern Joens but it is well within the province of a fact finder to credit part but not all of a witness' testimony.

> If I ever found us in a position where the Union conditions resulted in our not being competitive, there is nothing in the law or by virtue of a Union contract that says I do not have the right to close the plant. In the mid 1980's that is what I did when I closed down all of our branches."

3. *Lillian Huckleberry*

Huckleberry is the Quality Control Manager for Respondent.

Employee Anna Marie Angeles testified, through an interpreter, that she no longer works for Respondent and was approached by Lillian Huckleberry who spoke to her in English, which was translated into Spanish by lead Maria Madrigal.

Huckleberry asked Angeles do you want the union and Angeles replied no. This was asked after Huckleberry told her to read the antiunion company postings and said why would you want a union and give your money to another person and you can't come to the front office and speak for yourself but need to have someone else (the union) speak for you.

Employee Isidera Aspero, who still worked for Respondent at the time of the hearing was asked by Huckleberry through Madrigal do you want the union and Aspero answered that she wasn't sure. Huckleberry went on to say that if union gets in the factory will close and she better vote no.

Employee Anna Maria Flores testified that Huckleberry, through Madrigal, asked Flores if Huckleberry can count on her vote for the company and Flores testified she answered yes. Huckleberry asked if she had gotten her antiunion T-shirt being given out by Respondent and when Flores said no Huckleberry said I'll get you one.

Huckleberry testified that she remembered talking to Angeles but doesn't remember what was said. However, she testified she never asked any employee questions about their support or lack of same for the union. She only asked employees if they had any questions about Respondent's antiunion postings.

I credit Angeles, Aspero, and Flores over Huckleberry and conclude that Respondent violated Section 8(a)(1) of the Act when it unlawfully interrogated employees about their union support and threatened plant closure if the union was selected.

4. *Mark Meyer*

Mark Meyer is Respondent's General Manager.

In October 2000, six months after the April 2000 election and sometime prior to the then scheduled hearing in this case, Meyer had a meeting with employees. He spoke to them through interpreter Alex Casillas.

Meyer was asked when could the employees expect to get a raise. Meyer answered by saying that there would be no raises until everything is out of court and if the employees wanted a raise right away they should call the Union and tell the union to drop all charges.

Employees Marie Martha Garcia and Isidera Aspero testified that Meyer said it. Meyer denied saying it.

I credit Garcia and Aspero over Meyer on this point. Both Garcia and Aspero worked for Respondent at the time they testified before me. They speak Spanish. It could be that Alex Casillas' translation was faulty. Meyer speaks English and only a little Spanish.

Accordingly, I find that Respondent violated Section 8(a)(1) of the Act by informing employees that they would have received a wage increase if it were not for the continued presence of the union and if they abandon support for the Union they will receive a wage increase. See, *Gerig's Dump Trucking, Inc.,* 320 NLRB 1017, 1022-1023 (1996).

5. *Vern Joens*

Vern Joens was the shipping and receiving department supervisor for Respondent during the period leading up to April 13, 2000 election. When he testified before me he no longer worked for Respondent.

Christopher Marquez worked in the shipping and receiving department and drove a forklift.

Marquez testified that Joens approached him in March 2000 and told him to stop wearing a union T-shirt and to stop putting union logos on his forklift because Joens didn't want any problems with Mark Meyer, Respondent's General Manager.

Joens testified that he is now a cash vault supervisor at the LaSalle National Bank in Chicago. He further testified that he never told Marquez not to wear a union T-shirt but he had told him not to wear a hat because hats were forbidden in the food plant since they may fall into a product stream and Respondent was concerned about product contamination.

Joens testified that in March and April 2000 that Marquez wore a union T-shirt about three days per week and he never told him he could not wear it.

Joens did tell an employee — but couldn't remember if it was Marquez or not — not to put a union logo or sticker on his forklift because Respondent's policy was that no logos or stickers of any kind could be put on forklifts. This is non discriminatory application of a reasonable rule.

I found Joens to be credible and accordingly the Act was not violated by any conduct of Vern Joens.

C. Discharge of Josefina Gasca

The General Counsel maintains that Gasca is an employee within the meaning of the Act. Respondent claims that Gasca is a supervisor within the meaning of the Act. I agree with Respondent.

Section 2(11) of the Act defines "supervisor" as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Because this provision is to be read in the disjunctive, any of these enumerated powers is sufficient to confer supervisory status. As the Supreme Court stated in *NLRB v. Health Care & Retirement Corp. of America,* 511 U.S. 571, 573-574 (1994):

> [T]he statute requires the resolution of three questions; and each must be answered in the affirmative if an employee is to be deemed a supervisor. First, does the employee have the authority to engage in 1 of the 12 listed activities? Second, does the exercise of that authority require "the use of independent judgment"? Third, does the employee hold the authority "in the interest of the employer"?[2]

The Board has long held that the burden of establishing supervisory status rests on the party asserting supervisory status. In this case the burden of proving supervisory status rests on Respondent.

The bargaining unit that the parties agreed was appropriate and which the Region concurred was described as follows:

> All full-time production and maintenance employees, including mechanics and shipping and receiving employees employed by the Employer at its facility currently located at 9100 West 67th Street, Hodgkins, Illinois, but excluding all other employees, all employees laid-off on January 7, 2000, all quality assurance employees, all technical and part-time technical employees, all temporary employees, leads, office clerical employees, managers and guards, professional employees and supervisors as defined in the Act. (Emphasis added)

The unit description excluded "leads". Obviously being excluded from the unit by itself does not indicate leads are supervisors. All individuals that Respondent, the Union and the Region agreed were supervisors within the meaning of the Act received health insurance. The leads, like the rank and file employees, did not receive health insurance. On Respondent's performance evaluation form all the persons Respondent, the Union, and the Region agreed were supervisors had a place to fill in a rating. The leads, however, did not have a place on the form to provide a rating.

During the period leading up to the election Respondent had in its employ four leads or lead persons. Three leads in production, i.e., Josefina Gasca, Edith Reyes and Maria Madrigal, and one lead in shipping and receiving, i.e., Ricardo Hernandez.

The evidence at the hearing reflects that the leads or lead persons lacked authority to hire, transfer, suspend, lay off, recall, promote, discharge or reward employees. However, they had some authority to assign, discipline, and responsibly to direct work, and to adjust grievances.

Respondent had what it called GMPs or good management practices, e.g., not eating on the production line, women on the line had to wear hair nets, etc. The production leads ran the line and enforced the GMPs. The production leads granted permission to people on the line to go the rest room and assured that a relief worker took their place on the line when they went to the rest room. The production leads moved the people on the line from one position to another and occasionally from one production line to another.

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[2] See also the U.S. Supreme Court's recent decision in *NLRB v. Kentucky River Community Care, Inc., __ US __ (May 29, 2001).*

The production leads were in charge of insuring that the proper codes were set on the equipment when the line changed from repackaging one product to repackaging another product.

If overtime was approved by higher management the leads asked the employees on the line if they would work overtime and made sure enough people were found to work overtime.

The lead trained new employees on how to do their job. The leads kept attendance records for the employees on the line.

If an employee didn't want to work on the production line the lead would bring that to the attention of higher management. If an employee had to leave early they went to the one of the production leads. If the production line was slowing down it was the lead who would direct people to move faster. The production leads were in charge of keeping the production line clean and would direct employees to pick up trash.

Leads are paid more money — at the time of the hearing several dollars an hour more — than production workers. Leads punch a time clock like the production workers.

After the union arrived on the scene, leads wore T-shirts that had the word supervisor printed on it. On March 15, 2000, after the Union was on the scene, but approximately one month before the election the leads each signed a similar statement as to their authority.

On March 15, 2000 Gasca signed the following statement in evidence as General Counsel Exhibit 15:

> **"Designation of Lead Person Authority**
>
> Tara International has advised me that I have the following authority in my lead person job:
>
> I have authority on behalf of Tara to exercise independent discretion to direct the work of the employees in my department, to include regulating and controlling production line activities. I have the right to exercise independent discretion to assign positions to production personnel, to monitor production, to monitor quality and to require employees to redo product that does not meet quality standards, and to maintain order and cleanliness in the production area. I also have the authority to communicate with employees' matters on behalf of the company and to report to management matters of concern raised by my employees. I have authority to adjust employee grievances within the guidelines established by company policy. I have the authority to enforce company rules and policies and to administer discipline to employees who violate company rules and policies within the company's disciplinary guidelines."

I find that Josefina Gasca was a supervisor within the meaning of Section 2(11) and not entitled to protection under the Act.

However, even if I found that Gasca was an employee as defined in the Act, I do not find that the Act was violated when she was discharged.

Twelve days after the election Respondent laid off 36 employees and shortly thereafter reduced its complement of lead persons from four to two.

The lay off is not alleged in the complaint to be unlawful and there was evidence at the hearing that Respondent had lost some contracts which I suspect was the economic justification for the lay off and possibly why the lay off is not alleged as an unfair labor practice. It makes sense if production workers are laid off you need less supervision.

General Manager Mark Meyer made the decision to lay off production leads Josefina Gasca and Edith Reyes rather than reduce them to production workers. Meyer picked Gasca and Reyes, he testified, because their language skills were not as good as Madrigal who was the only production lead he kept on. Gasca, Reyes and Madrigal all testified before me and Madrigal was more fluent in English then Gasca and Reyes. Shipping and receiving lead Hernandez was also retained.

On May 5, 2000, ten days after the lay off, Meyer testified he told Gasca she was being let go because of Respondent's downsizing. The leads who were let go received severance pay although the employees laid off did not receive severance pay.

Kim Burke, Respondent's Materials Manager, was present when Meyer told Gasca she was being terminated because of Respondent's downsizing. Meyer and Burke testified that the union was not mentioned at Gasca's termination interview. I found Meyer and Burke to be credible witnesses.

Gasca testified that at her termination interview Meyer told her, with Kim Burke present, that she was being terminated because she "did not do a good job for the company against the union."

I credit Meyer and Burke over Gasca and conclude that Gasca was terminated, and was told she was terminated, because of Respondent's downsizing.

Since I conclude that Gasca was a statutory supervisor it was not unlawful for her to attend meetings with other management officials where management discussed which employees were for the union and which were against the union and the supervisors were told to support management's position that the employees would be better off without a union.

D. Failure to Recall or Rehire Christopher Marquez

Christopher Marquez was the employee who started the union organizing campaign among Respondent's employees by contacting the Union in February 2000.

It is undisputed that he was known to management to be a union supporter.

He was the union observer at the April 13, 2000 election, which the union lost, by a vote of 61 to 56.

Effective April 26, 2000, 36 employees were laid off. Thirty-four (34) from production and two, Gerardo Gonzalez and Christopher Marquez, from shipping and receiving. The lay off is not alleged as unlawful. Some production employees were later recalled from lay off but no employees from shipping and receiving were recalled.

Three months later, in July 2000, Respondent began hiring employees.

Marquez went to Respondent's office seeking employment on July 27, 2000. He spoke with Antoinette "Tony" Lenz in the office. Lenz said Marquez was looking for part time work and

left his new phone number. Lenz prepared a note for Jackie Dailey, Respondent's office manager, who would do the hiring. Lenz' note to Dailey in evidence as Respondent Exhibit 3 clearly states that Marquez "wants part-time temp."

On August 30, 2000, Marquez returned to the office to speak to Jackie Dailey, the Office Manager, about employment. Marquez testified he told her he was looking for full time work but would take whatever he could get. Both Dailey and "Tony" Lenz, whose desk is right near Dailey's desk, and who overheard the conversation between Marquez and Dailey heard Marquez say that he was looking for a second job because he wanted to buy a house. According to both Lenz and Dailey, Marquez said he was working at Tru Vue and he was told by Dailey that Respondent could not fit his request to work part time into Respondent's schedule. Dailey said the decision not to hire Marquez was made by her and her alone and was made because Marquez wanted to work part time and they could not accommodate his hours.

Dailey prepared paper work to reflect that Marquez wanted part time work and was not hired.

I credit Dailey and Lenz over Marquez. Marquez' credibility was impeached by Respondent bringing out that he had been convicted of felony car hijacking. This prior conviction went to Marquez' credibility and was not the reason or part of the reason that Respondent didn't hire him.

Marquez, I note, was making $8.50 per hour at Tru Vue and why would he want a full time job at Respondent that paid $6.50 per hour. Marquez explained that his hands were being cut in his job at Tru Vue and Tru Vue was going to swing shifts which would interfere with his plans to go to school. Marquez testified that he voluntarily quit Tru Vue but Tru Vue records indicate he was terminated for no call no show rules violations. Of course, Marquez may have simply voluntarily quit without notice and didn't call in or show up.

All evidence being considered I credit Dailey, who is corroborated in significant details by Lenz, that Marquez was not hired because he wanted part time work and Respondent couldn't accommodate his hours. Accordingly, Marquez, I find, was not denied hire because of his union activities.

Respondent did not violate the Act when it failed to hire Marquez and did not violate the Act when it did not recall Marquez because even though Marquez had a good job performance rating no one laid off in shipping and receiving was recalled.

Remedy

The remedy in this case is that Respondent should cease and desist from its unlawful activities and post an appropriate notice in both English and Spanish.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act as more fully spelled out in part III, B of this decision.

4. The unfair labor practices committed by Respondent effect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record I issue the following recommended[3]

ORDER

Respondent, Tara International, L.P., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that the plant will close if the employees select a union to represent them.

(b) Threatening employees, many of whom are from Mexico, that if they select a union to represent them they may no longer get leaves of absence to return to Mexico.

(c) Interrogating employees about their union sympathies.

(d) Informing employees that it will be futile to select a union to represent them.

(e) Informing employees that there will be no wage increase until the union situation is resolved and if the employees want wage increases raises sooner they should tell the union to drop all charges.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region post at its facility in Hodgkins, Illinois, and all other places where notices customarily are posted, copies of the attached notice marked "Appendix A" in both English and Spanish.[4] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

employees and former employees employed by the Respondent at any time since February 25, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 25, 2001.

_____
Martin J. Linsky
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees that the plant will close if they select a union to represent them.

WE WILL NOT threaten employees, many of whom are from Mexico, that if they select a union to represent them they no longer will receive leaves of absence to visit Mexico.

WE WILL NOT interrogate employees about their union sympathies.

WE WILL NOT inform employees that it will be futile for them to select a union to represent them.

WE WILL NOT inform employees that there will be no wage increases until the union situation is resolved and if the employees want wage increases sooner they should call the union and tell the union to drop all charges.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

TARA INTERNATIONAL, L.P.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 200 West Adams Street, Suite 800, Chicago, Illinois 60606–5208, Telephone 312–886–3036.